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25 See Attachment A for additional counsel

26 UNITED STATES DISTRICT COURT
27 NORTHERN DISTRICT OF CALIFORNIA
28 OAKLAND DIVISION

21 DIGITAL IMPACT, INC., a Delaware
22 corporation,

23 Plaintiff,

24 vs.

25 BIGFOOT INTERACTIVE, INC., a Delaware
26 corporation,

27 Defendant.

28 AND RELATED COUNTERCLAIM

RELATED CASES:
NO. C05 00636 SBA
NO. C05 00990 SBA

STIPULATION AND ORDER
CONTINUING CASE SCHEDULE

DIGITAL IMPACT, INC., a Delaware corporation,
Plaintiff,
vs.
YESMAIL, INC., a Delaware corporation,
Defendant.

AND RELATED COUNTERCLAIM

THE PARTIES HEREBY STIPULATE, by and through their respective counsel, to the matters set forth below based on the following:

1. Pursuant to their earlier representations to this Court, the parties desire to utilize the services of a magistrate judge in order to try to settle each of the two related cases before engaging in discovery and incurring substantial litigation costs. On November 16, 2005, the Court assigned the cases to Magistrate Judge Bernard Zimmerman for purposes of settlement. The assignment order specified that Judge Zimmerman must complete his efforts on or before November 28, 2006.

2. Judge Zimmerman held a status conference with the parties on December 5, 2005. During that conference, Judge Zimmerman explained that his approach to settling patent cases requires several months and that this approach was within the parameters of the Court's assignment order.

3. The parties' desire is to have Judge Zimmerman try his approach. His approach conflicts, however, with the current Case Management Order, which sets deadlines for the case beginning on December 16, 2005.

WHEREFORE, the parties stipulate to the following:

1. Pending the parties' attempt to settle the case, discovery in both related cases shall be stayed. If resolution of either case is not successful, the court will then conduct a limited "mini-Markman" proceeding in accordance with the rest of this order. At that time, limited discovery may be conducted solely as to the issues presented in that proceeding without prejudice to

subsequent discovery on all relevant issues if the case is not resolved by the mini-Markman proceeding.

2. The Court will hold a "mini-Markman" hearing on October 30, 2006, at 9:00 a.m. concurrently in both related cases. The purpose of the "mini-Markman" hearing will be to construe the patent-at-issue, U.S. Patent No. 6,449,634, with respect to the sole issue of whether the patent's claims require steps from independent parties.

3. The schedule of submissions prior to that hearing is set forth below:

| <u>Deadline</u> | <u>Activity</u> |
|--------------------|---|
| June 16, 2006 | Exchange of Proposed Terms and Claim Elements for Construction (Pat. L.R. 4-1). The parties are to limit the terms to be construed to no more than six terms. |
| June 23, 2006 | Exchange of Preliminary Claim Constructions and Extrinsic Evidence (Pat. L.R. 4-2). |
| July 14, 2006 | Joint Claim Construction and Prehearing Statement (Pat. L.R. 4-3). |
| August 14, 2006 | Claim Construction Discovery closes. |
| August 28, 2006 | Bigfoot and Yesmail file their "mini-Markman" briefs. |
| September 11, 2006 | Digital Impact files its opposition papers. |
| September 18, 2006 | Bigfoot and Yesmail file their reply papers. |
| October 30, 2006 | Mini-Markman hearing |

3. The parties anticipate that discovery in this case will require the disclosure of substantial amounts of confidential, proprietary and other commercially sensitive information, and therefore will seek the entry of a mutually agreeable protective order in each related case. All other

STIPULATION AND ORDER CONTINUING CASE SCHEDULE

Case Nos. C 05-00636 SBA and C-05-00990 SBA - 3 -

proceedings and disclosures will be deferred until after the Court issues its mini-Markman order. If that order does not dispose of the case, the parties may propound discovery on any of the remaining issues in the case without further leave of Court.

4. After issuing its mini-Markman order, the court shall, if necessary, set a date for a further case management conference for the purpose of scheduling dates for the balance of the case.

DATED: December 14, 2005

TOMLINSON ZISKO LLP

BY /s/ Thomas E. Moore III
Thomas E. Moore III
Attorneys for Plaintiff and Counter-
defendant, DIGITAL IMPACT, INC.

DATED: December 14, 2005

REED SMITH LLP

BY /s/ Arthur M. Dresner
Arthur M. Dresner
Attorneys for Defendant and Counterclaimant
BIGFOOT INTERACTIVE, INC.

DATED: December 14, 2005


HELLER EHRMAN LLP

BY /s/ L.J. Chris Martiniak
L.J. Chris Martiniak
Attorneys for Defendant and Counterclaimant,
YESMAIL, INC.

ORDER

IT IS SO ORDERED.

DATED: 1/3/06


HON. SAUNDRA B. ARMSTRONG
UNITED STATES DISTRICT JUDGE